

Message

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To: Svingen, Eric [Svingen.Eric@epa.gov]
Subject: Ozone in the News - EPA Weighs Regulatory 'Relief' Options...

 EPA Weighs Regulatory 'Relief' Options... has been added



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Title: EPA Weighs Regulatory 'Relief' Options For Ozone NAAQS Implementation

Body:

EPA Weighs Regulatory 'Relief' Options For Ozone NAAQS Implementation

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EPA is weighing several options to provide states and industries regulatory "relief" when implementing the Obama-era's 2015 rule tightening the ozone national ambient air quality standard (NAAQS), including streamlining Clean Air Act permitting reviews, revising monitoring procedures, and more according to a report to Congress.

The Aug. 14 report says the agency could offer the measures in its pending rule detailing the steps states can take in their state implementation plans (SIPs) for complying with the 2015 standard of 70 parts per billion (ppb).

"EPA is examining and may include additional relief in its final implementation rule for the 2015 ozone NAAQS and will further consider other mechanisms for providing regulatory relief suggested by stakeholders," the report says.

EPA is yet to issue a final implementation rule for the 2015 ozone standard, but its implementation rule for the weaker 2008 ozone limit of 75 ppb faces a suit scheduled for argument next month over measures that environmentalists fear will weaken implementation of the standard and lead to increased ozone air pollution.

As the agency crafts the 2015 ozone NAAQS implementation rule, the report says that regulatory relief options that are under consideration include: "[S]trengthening preconstruction permitting review for new and modified stationary sources, whether there are flexibilities for areas significantly impacted by background ozone in addition to the statutory international transport relief provided for areas impacted by international sources, and establishing a nonattainment area classification scheme that provides states with as much flexibility as possible to craft local solutions before the onset of more prescriptive mandatory requirements."

Other relief options "that have been suggested" according to the report are: "[R]evising monitoring or data handling procedures to exclude exceedances attributable to background ozone, deferring designations in locations impacted by background ozone, and designating areas

influenced by background ozone as unclassifiable. EPA is still exploring whether these additional mechanisms may provide a viable path forward for providing regulatory relief."

EPA also says it will "continue investing in the science" on ozone to better evaluate and quantify naturally occurring background ozone that cannot be regulated, and to assist in exceptional events demonstrations.

Congress mandated in the consolidated fiscal year 2017 appropriations law enacted May 5 that EPA provide the House and Senate spending panels with a report "examining the potential for administrative options to enable States to enter into cooperative agreements with the Agency that provide regulatory relief and meaningfully clean up the air."

The lawmakers' directive responds to concerns from GOP lawmakers, industry groups and others that the 70 ppb standard is unnecessarily strict and will lead to onerous and expensive air pollution reduction mandates for businesses. Critics of the tighter standard say that simply being placed in nonattainment with the NAAQS is enough to drive companies away, due to their fear about the costs of having to comply with a strict SIP written for such areas.

Existing steps that EPA has offered through ozone implementation rules and other measures include discounting ozone pollution associated with "exceptional events" such as wildfires from counting toward NAAQS compliance, and allowing some areas almost in attainment to be classified as "marginal attainment" rather than violating the standard -- a move that means they are subject to less-onerous SIP requirements for reducing ozone.

Legal Challenges

But the additional new regulatory relief steps EPA says it is weighing could face legal challenges from environmentalists and Democratic-led states if they fear the measures could weaken implementation of the 70 ppb limit, in turn increasing ozone air pollution that poses a risk to public health and the environment.

EPA Administrator Scott Pruitt had previously tried to delay from October this year until October 2018 the deadline for issuing designations for which areas are attaining or violating the NAAQS, which triggers the Clean Air Act clock for writing SIPs. The U.S. Court of Appeals for the District of Columbia Circuit's vacatur of an unrelated delay of a methane rule was said to be a factor in Pruitt's decision to withdraw the ozone designations delay.

Pruitt is asking a federal appeals court to dismiss litigation over the delay as moot, but petitioners are opposing the request for fear he might try a similar delay again. A coalition of Democratic-led states is asking the D.C. Circuit to vacate the delay as unlawful to prevent any attempt to revive it.

The report to Congress, first reported by *Greenwire*, does not wade into the legal back-and-forth over the designations delay and instead largely summarizes prior and existing EPA efforts designed to help states and industries with their steps toward complying with federal ozone standards.

Toward the end of the report the agency outlines the various regulatory relief measures that it is considering, but avoids making a commitment on adopting any of them.

EPA also acknowledges that some of the regulatory relief measures in the 2008 ozone NAAQS implementation rule face ongoing legal challenges in a D.C. Circuit case slated for oral argument Sept. 14.

In particular, it notes that its decision in that rule to revoke the prior 1997 ozone standard expressed as 84 ppb is one of the issues in the consolidated litigation *South Coast Air Quality Management District v. EPA, et al.* "This provision is currently in litigation in the D.C. Circuit, and

the outcome of that litigation could affect moving forward with this [relief] in the future," the agency says. -- *Anthony Lacey* (alacey@iwpnews.com)

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